



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

In re:	) Chapter 11
	)
Eagle-Picher Holdings, Inc. et al.,	) Jointly Administered
	) Case No. 05-12601
Debtors.	)
	) Judge Vincent J. Aug, Jr.

**SETTLEMENT AGREEMENT**

WHEREAS, on April 11, 2005, Eagle-Picher Holdings, Inc. and certain of its affiliates<sup>1</sup> (each a "Debtor," and collectively, the "Debtors"), debtors and debtors in possession filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as amended (the "Bankruptcy Code"), which cases are being jointly administered under Case No. 05-12601 (the "Bankruptcy Cases");

WHEREAS, on May 31, 2006, Debtors filed Debtors' Second Amended Joint Plan of Reorganization (Doc. No. 2114) (as it may be amended from time to time, the "Plan");

WHEREAS, On June 28, 2006, the Bankruptcy Court entered the Confirmation Order (Docket No. 2189) pursuant to which the Bankruptcy Court confirmed the Debtors' Plan;

WHEREAS, Section 5.12 of the Plan provides for the creation of the EP Custodial Trust, to, *inter alia*, own certain specified real property referred to as the Designated Property and the Transitional Property and manage and/or fund the applicable Environmental Costs of the Environmental Actions, lease the Transitional Property pursuant to the TP Leases and ultimately sell, transfer or otherwise dispose of the Designated Property and the Transitional Property to one or more third parties.

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<sup>1</sup> The affiliated debtor entities are EaglePicher Incorporated, EaglePicher Technologies LLC, EaglePicher Filtration & Minerals, LLC, EaglePicher Pharmaceutical Services, LLC, EaglePicher Automotive, Inc., Daisy Parts, Inc. and Carpenter Enterprises Limited.

WHEREAS, pursuant to Section 5.12 of the Plan, the EP Custodial Trust will be funded in amounts the Bankruptcy Court determined, and in the case of Designated Property and Transitional Property located in the States of Kansas, Oklahoma, Illinois and Michigan, the United States and the States of Kansas, Oklahoma, Illinois and Michigan agree for settlement purposes, are sufficient to pay the Environmental Costs of the Designated Property and the Transitional Property and to administer the EP Custodial Trust;

WHEREAS, the EP Custodial Trust shall be created and governed by the terms the Custodial Trust Agreement, which, among other things, contemplates the creation of multiple segregated Custodial Trust Accounts to own, manage and fund Environmental Costs related to the Designated Property and Transitional Property under the Plan;

WHEREAS, the Illinois Custodial Trust Account will own the real property specified in Exhibit C of the Plan and more specifically described in Exhibit A to the Custodial Trust Agreement (the "Illinois Property"), which is known individually to the Parties as the "Galena Site." For ease of reference, the legal description of the Galena Site is reproduced in "Exhibit A" attached hereto and incorporated by reference herein;

WHEREAS, the Illinois Environmental Protection Agency and the United States on behalf of the Environmental Protection Agency (collectively, "Governmental Parties") allege that Debtors have liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), and similar state statutes, and federal and state regulations promulgated thereunder, for response actions and/or response costs for investigations and remediation actions and/or investigations and remediation costs with respect to the Illinois Property;

WHEREAS, in the absence of this Settlement Agreement, the Debtors would dispute the allegations of the Governmental Parties and would object, in whole or in part, to any claims that the Governmental Parties may file with respect to the Illinois Property;

WHEREAS, in the absence of this Settlement Agreement, the Governmental Parties would dispute the amounts that Debtors would otherwise propose to fund the Illinois Custodial Trust Account and would object to confirmation of the Plan on the ground that it is not feasible and is forbidden by law;

WHEREAS, the Debtors seek to obtain protection, through the resolution of environmental liabilities with respect to the Illinois Property as provided herein, from and against all claims, causes of action, remedies or otherwise under CERCLA, or similar state statutes and federal and state regulations promulgated thereunder, that have been or may in the future be asserted for response actions and/or response costs for investigations and remediation actions and/or investigations and remediation costs; and

WHEREAS, the Debtors' and the Government Parties hereto, without admission of liability by the Debtors, desire to settle, compromise and resolve the claims and contentions of the Governmental Parties regarding the Illinois Property as provided herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the Parties hereto, subject to approval by the Bankruptcy Court, as follows:

1. **Definitions.**

Capitalized Terms used but not otherwise defined herein shall have the respective meanings given, as applicable, in the Custodial Trust Agreement and Plan. The following terms as used in this Agreement shall have the definitions given below:

"Agreement" shall mean this Settlement Agreement.

"Bankruptcy Cases" shall have the meaning set forth in the recitals to this Agreement.

"Bankruptcy Code" shall have the meaning set forth in the recitals to this Agreement.

"Bankruptcy Court" shall mean the court in the Southern District of Ohio, Western Division, conferred with authority over the Bankruptcy Cases or the court so authorized with respect to any proceedings in connection therewith for the purpose of such proceedings.

"Budget" shall have the meaning set forth in Section 4(a) of this Agreement.

"CERCLA" shall have the meaning set forth in the recitals to this Agreement.

"Covenant Parties" shall have the meaning set forth in Section 7(a) of this Agreement.

"Custodial Trust Accounts" shall have the meaning set forth in the Custodial Trust Agreement.

"Custodial Trustee" shall mean William L. West, but solely in his capacity as custodial trustee of the EP Custodial Trust, and any successor thereto chosen in accordance with the Custodial Trust Agreement.

"Custodial Trust Parties" shall mean the Custodial Trustee and any member, employee, officer, director, and the professionals and attorneys of the Custodial Trustee, but not the EP Custodial Trust.

"Debtors" shall have the meaning set forth in the recitals to this Agreement.

"Effective Date" shall mean the Effective Date of the Plan, as defined therein.

**“Environmental Actions”** shall mean investigation, remediation, response, closure and post-closure actions to the extent required by applicable law, including bankruptcy law and Environmental Law, and those actions agreed to be performed under this Settlement Agreement, and, if and to the extent that funds are available in the applicable Custodial Trust Account, such other response actions as the Custodial Trustee, after consultation with the Lead Agency, determines would facilitate the sale, transfer or other disposition of the Illinois Property.

**“Environmental Costs”** shall mean the costs and expenses of implementing Environmental Actions.

**“Environmental Law”** means any applicable federal, state or local law, statute, ordinance, rule, regulation or code, any license, permit, authorization, administrative or court order, judgment, decree or injunction, including all common law, related to pollution, protection of health, safety or the environment, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of pollutants or toxic or Hazardous Substances, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, *et seq.*; the Clean Air Act, as amended, 42 U.S.C. Section 7401, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f, *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 *et seq.*, and the Occupational Safety and Health Act, 29 U.S.C. 651, *et seq.*

**"EP Custodial Trust"** shall mean the custodial trust established under the Custodial Trust Agreement consistent with Section 5.12(a) of the Plan.

**"Governmental Parties"** shall mean the United States on behalf of the USEPA and the Illinois Environmental Protection Agency on its own behalf.

**"Hazardous Substances"** shall mean all materials, substances or wastes defined, designated, regulated or classified as hazardous, toxic or radioactive, under any applicable Environmental Laws, whether by type or by quantity, and petroleum or any derivative or by-product thereof.

**"IEPA"** shall mean the Illinois Environmental Protection Agency and any successor departments or agencies thereof.

**"Illinois Custodial Trust Account"** shall mean the Custodial Trust Account created to own the Illinois Property and the Funding to perform the Environmental Actions with respect to Illinois Property.

**"Illinois Property"** shall have the meaning set forth in the recitals to this Agreement.

**"Lead Agency"** shall have the meaning set forth in Section 3(c) of this Agreement.

**"NewCo"** shall mean individually, and **"NewCos"** shall mean collectively, the direct and indirect subsidiaries of New HoldCo to be formed in conjunction with the Plan and identified on Exhibit D to the Plan.

**"New HoldCo"** shall mean the holding company formed in conjunction with the Plan, the common stock of which will constitute a portion of the Plan Consideration that will be paid to the Debtors pursuant to the Purchase Agreements and which, pursuant to the Plan, will in turn be distributed to creditors of the Debtors.

**"Parties"** shall mean the United States on behalf of the USEPA, the Illinois Environmental Protection Agency on its own behalf, the Debtors and the Custodial Trustee.

**"Plan"** shall have the meaning set forth in the recitals of this Agreement.

**"Plan Trust"** shall have the meaning set forth in Article VI of the Plan.

**"Response Date"** shall have the meaning set forth in Section 4(a) of this Agreement.

**"Settlers"** shall mean EaglePicher Incorporated, EaglePicher Technologies LLC, EaglePicher Automotive, Inc., Daisy Parts, Inc. and Carpenter Enterprises Limited.

**"United States"** shall mean the United States of America, including USEPA, the Department of Justice, and all of the United States' agencies, departments, and instrumentalities.

**"USEPA"** shall mean the United States Environmental Protection Agency and any successor departments or agencies thereof.

**2. Formation and Purpose of the EP Custodial Trust.**

On the Effective Date, the EP Custodial Trust shall be established pursuant to the terms of the Plan and more specifically the Custodial Trust Agreement, which shall be substantially in the form attached hereto as "Exhibit C." The purpose of the EP Custodial Trust is as set forth in the Custodial Trust Agreement.

**3. The Illinois Custodial Trust Account.**

(a) **Funding.** The Illinois Custodial Trust Account shall be funded with the aggregate sum of \$1,150,000 in Cash Funding on the Effective Date pursuant to Section 2.1 of the Custodial Trust Agreement. The general administration of the EP Custodial Trust shall be funded out of the Administration Custodial Trust Account created for that purpose. General administrative costs do not include costs incurred by the IEPA for oversight, which shall be remitted from the Illinois Custodial Trust Accounts pursuant to Section 3(e) of this Agreement.

(b) [Intentionally left blank]

(c) Lead Agency. IEPA shall be the "Lead Agency" with primary oversight authority among the Governmental Parties over the EP Custodial Trust's implementation of Environmental Actions at the Illinois Property; *provided, however*, that the Lead Agency may be substituted upon the delivery of written notice, signed by USEPA and IEPA, to the Custodial Trustee and the Parties.

(d) Approval of Environmental Costs. The Custodial Trustee shall use the Illinois Custodial Trust Account only to fund the respective Environmental Costs of the Illinois Property held in the EP Custodial Trust consistent with the Budgets prepared in accordance with Section 4 of this Agreement.

(e) Reimbursement of Oversight Costs. The Custodial Trustee shall pay funds from the applicable Illinois Custodial Trust Account to the Lead Agency within thirty (30) days of the Lead Agency's request to reimburse it for reasonable oversight costs incurred by the Lead Agency as to the Illinois Property.

4. Supplemental Provisions to Custodial Trust Agreement.

(a) Budget. The Custodial Trustee shall provide the Lead Agency with an annual itemized budget of projected Environmental Costs (the "Budget") pursuant to the timetable set forth in the Custodial Trust Agreement, *provided however*, that the Custodial Trustee shall deliver the Budget by regular U.S. mail to the Lead Agency and the other Governmental Party as provided in Section 12 of this Agreement. The Lead Agency shall review the Budget, consult with the other Governmental Party, and may comment on or object to the Budget within twenty (20) business days of mailing by the Trustee (the "Response Date"). Upon receipt of such comments or objection, the Lead Agency and the Custodial Trustee shall promptly meet and



confer to attempt to resolve their differences regarding the Budget. If they are unable to resolve their differences, either Party may utilize the dispute resolution procedures prescribed by Section 5.3 of the Custodial Trust Agreement.

(b) Site Specific Environmental Actions and Other actions. Subject to the availability of funds in the applicable Custodial Trust Account, the Custodial Trustee shall perform (i) the actions described in Exhibit B hereto (which the Parties agree are Environmental Actions), (ii) such other Environmental Actions, if any, that are required by applicable law, including bankruptcy and Environmental Law and (iii) provided funds are or will be available in the applicable Custodial Trust Account following the performance of the Environmental Actions prescribed by (i) and (ii) above, such other actions as the Custodial Trustee, after consultation with the Lead Agency, determines would facilitate the sale, transfer or other disposition of the Illinois Property.

(c) Lead Agency Consultation with the Other Governmental Party. In connection with the review and approval of the Site Investigation Plan, the Remedial Action Work Plan and the Remediation Report, the Lead Agency shall consult with the other Governmental Party. The Lead Agency may consult with the other Governmental Party as necessary from time to time in the course of its review of an aspect of its review and approval of the Environmental Actions under this Agreement.

(d) Disposition of Illinois Property. Nothing in this Agreement or the Custodial Trust Agreement, including, without limitation, Section 2.6(c) thereof, (collectively "These Agreements") shall be construed to require the Governmental Parties to take title to or possession of the Illinois Property or any portion thereof; *provided, however*, that These Agreements shall not be construed to modify, abrogate or otherwise affect the statutes,

regulations or rules of practice of the Bankruptcy Court pertaining to the disposition of the Illinois Property.

**5. Continued Operation.**

The applicable Settlor shall continue, at its own expense, the operations of any on-site systems, monitoring systems, and other ongoing environmental activities, if any, with respect to the Illinois Property through the Effective Date.

**6. Access and Restrictive Easements and Covenants.**

The Custodial Trustee shall provide the Lead Agency and its authorized representatives reasonable access to the Illinois Property for the purposes of inspecting and monitoring implementation of the Environmental Actions, including examining and gathering data consistent with applicable law. Further, the Custodial Trustee shall place restrictive easements and covenants and implement any institutional controls with respect to the Illinois Property, if any, consistent with Exhibit B.

**7. Covenants Not to Sue.**

(a) United States' Covenant Not to Sue. In consideration of the actions that will be performed pursuant to this Agreement, the United States on behalf of USEPA and Department of Justice covenants not to bring a civil judicial or civil administrative action or take any other civil action against Debtors, Plan Trust, New HoldCo, NewCos, the Custodial Trust Parties and the EP Custodial Trust (the "Covenant Parties") under CERCLA and regulations promulgated thereunder with respect to the Illinois Property; *provided, however*, nothing herein shall relieve any Covenant Party of any liability for any new acts by such Party after the Effective Date to the extent such acts (including operation or ownership of the Property after the Effective Date) create liability under Environmental Laws with respect to the Illinois Property; *provided*,

however, that mere ownership of the Illinois Property by the EP Custodial Trust after the Effective Date shall not constitute a "new act" creating liability. For the avoidance of doubt, the issuance, support, and continued maintenance of letters of credit or other Funding that may be provided under Section 2.1(b) of the Custodial Trust Agreement by or at the direction of the New HoldCo and/or any of the NewCos shall not constitute a "new act" giving rise to liability. The United States reserves all rights relating to enforcement of the requirements of this Agreement consistent with the requirements of the Custodial Trust Agreement. The Covenant Parties shall be deemed to have resolved their civil liability as provided herein under CERCLA and regulations promulgated thereunder to the United States with respect to the Illinois Property. The United States' covenant not to sue each Covenant Party is conditioned upon the satisfactory performance by that Covenant Party of its obligations under this Agreement.

(b) IEPA's Covenant Not to Sue. In consideration of the actions that will be performed pursuant to this Agreement, the IEPA on its own behalf covenants not to bring a civil judicial or civil administrative action or take any other civil action against the Covenant Parties under CERCLA and regulations promulgated thereunder and any other applicable state environmental statute or regulation, including, but not limited to, the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* with respect to the Illinois Property; *provided, however,* nothing herein shall relieve any Covenant Party of any liability for any new acts by such Party after the Effective Date to the extent such acts (including operation or ownership of the Property after the Effective Date) create liability under Environmental Laws with respect to the Illinois Property; *provided, however,* that mere ownership of the Illinois Property by the EP Custodial Trust after the Effective Date shall not constitute a "new act" creating liability. For the avoidance of doubt, the issuance, support, and continued maintenance of letters of credit or other

Funding that may be provided under Section 2.1(b) of the Custodial Trust Agreement by or at the direction of the New HoldCo and/or any of the NewCos shall not constitute a "new act" giving rise to liability. The IEPA reserves all rights relating to enforcement of the requirements of this Agreement consistent with the Custodial Trust Agreement. The Covenant Parties shall be deemed to have resolved their civil liability as provided herein under CERCLA and regulations promulgated thereunder and any other applicable state environmental statute or regulation, including, but not limited to, the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* to the IEPA with respect to the Illinois Property. The IEPA's covenant not to sue each Covenant Party is conditioned upon the satisfactory performance of that Covenant Party of its obligations under this Agreement.

(c) Successor Protection. Without limiting any discharge, release, or injunction afforded as a result of orders or actions of the Bankruptcy Court, the covenants not to sue and exceptions thereto above shall also apply to Debtors' successors, assigns, employees, officers, and directors but only to the extent that the alleged liability of such successor, assign, employee, officer, or director is based upon its respective status as a successor, assign, employee, officer, or director, and not to the extent that the alleged liability arose independently of the alleged liability of Debtors.

(d) Debtors' and Custodial Trustee's Covenant Not to Sue. Debtors and the Custodial Trustee covenant not to sue and the Plan and/or Confirmation Order shall provide that the Plan Trust, New HoldCo and NewCos covenant not to sue, the United States and all of their departments, agencies, and instrumentalities or the IEPA for contribution or reimbursement for Environmental Actions and Environmental Costs with respect to the Illinois Property, including but not limited to:

(i) any direct or indirect claim for reimbursement from the Hazardous Substances Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law or similar funds of the IEPA;

(ii) any claims against the United States or the IEPA, and any of their departments, agencies, and instrumentalities under CERCLA Sections 107 or 113 or similar State statutes related to the Illinois Property; *provided, however*, nothing herein shall relieve any Covenant Party of any liability for any new acts by such Party after the Effective Date to the extent such acts (including operation or ownership of the Property after the Effective Date) create liability under Environmental Laws with respect to the Illinois Property; *provided, however*, that mere ownership of the Illinois Property by the EP Custodial Trust after the Effective Date shall not constitute a “new act” creating liability. For the avoidance of doubt, the issuance, support, and continued maintenance of letters of credit or other Funding that may be provided under Section 2.1(b) of the Custodial Trust Agreement by or at the direction of the New HoldCo and/or any of the NewCos shall not constitute a “new act” giving rise to liability; and

(iii) any claims arising out of Environmental Actions at or in connection with the Illinois Property, including any claim under the United States Constitution, the Constitution of the State, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

(e) Reservations of Rights. Notwithstanding any provision of this Agreement, the United States and the IEPA retain all access authorities and rights and information gathering authorities and rights with respect to the Illinois Property, including enforcement authorities

related thereto, under CERCLA and similar state statutes, and any other applicable statute or regulations.

Debtors, Plan Trust, New HoldCo, NewCos and the Custodial Trustee reserve all rights relating to enforcement of the provisions of this Agreement consistent with Section 13 of this Agreement and the Custodial Trust Agreement.

Nothing in this Agreement shall excuse the EP Custodial Trust from any disclosure or notification requirements imposed by CERCLA or any other applicable federal or state law or regulation. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA or 40 C.F.R. § 300.700(d).

In the event of any action or occurrence during the performance of the work which causes or threatens a release of Hazardous Substances from the site that constitutes an emergency situation or a situation that presents an immediate threat to public health or welfare or the environment, the Custodial Trustee shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. In the event that the Custodial Trustee fails to take appropriate response action, the Lead Agency may take appropriate response action as required by this Section and the Custodial Trustee, with the approval of the Bankruptcy Court upon application by the Lead Agency with respect thereto, shall reimburse the Lead Agency for all costs of the response action necessary to prevent, abate or minimize the release or threat of release.

Nothing in this Agreement shall be deemed to limit the authority of the Governmental Parties to take response action under Section 104 of CERCLA or any other applicable law or regulation; *provided, however*, that if either or both of the Governmental Parties does take such response action at or with regard to the Illinois Property, the Governmental Parties shall not seek

and shall not be entitled to recover any response or similar costs associated with such response action from the Debtors, Plan Trust, New HoldCo, the NewCos, the Custodial Trust Parties and the EP Custodial Trust; *provided further*, that the foregoing sentence shall not be construed to limit or be in derogation of the rights of the Governmental Parties under Section 4.3 of the Custodial Trust Agreement, the preceding paragraph of this Section 7(e) or the exceptions set forth in Sections 7(a), (b) and (d) for new acts.

**8. Contribution Protection/Third Parties.**

The Covenant Parties have resolved their liability, if any, under CERCLA and similar state statutes and federal and state regulations promulgated thereunder as provided herein and are entitled to protection from contribution actions or claims as provided by CERCLA § 113(f)(2) for matters addressed by this Agreement. Neither the Plan Trust nor New HoldCo or any of the NewCos shall have any liability to any party for the Environmental Actions, subject to the exceptions set forth in Section 7(a) and (b) above for new acts. Matters addressed by this Agreement for purposes of contribution protection shall include all claims or causes of action under CERCLA and regulations promulgated thereunder and similar state statutes and regulations, including the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, with respect to the Illinois Property.

**9. Proofs of Claim and Administrative Expenses.**

Any proofs of claim and requests for administrative expenses against the Debtors with respect to the Illinois Property described in this Agreement are withdrawn with prejudice and expunged as resolved by the terms herein upon the Effective Date and the IEPA and the United States shall not be entitled to any distributions from the Settlers' estates with respect to the Illinois Property, except the funding described in Section 3 of this Agreement and the applicable

provisions of the Custodial Trust Agreement. All other proofs of claim not related to the Illinois Property remain unaffected by this Agreement.

**10. Liability of the EP Custodial Trust and the Custodial Trust Parties.**

The EP Custodial Trust and the Custodial Trust Parties shall be afforded all of the protections provided for in this Agreement and the Custodial Trust Agreement.

**11. Approval and Public Comment.**

Consent and approval of this Agreement by the United States is subject to public comment in accordance with Section 122(d)(2) of CERCLA and 28 §CFR 50.7. This Agreement will be lodged with the Bankruptcy Court and submitted for public comment. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Agreement disclose factors or considerations which indicate that this Agreement is inappropriate, improper, or inadequate. The United States agrees to consider an expedited public comment period for this Agreement. All other Parties consent to entry of this Agreement without further notice, except that this Agreement shall not become effective until participation of the Debtors is approved by the Bankruptcy Court and the Effective Date of the Plan. The Debtors will promptly seek the approval of the Bankruptcy Court of their entry into this Agreement in accordance with Bankruptcy Rule 9019. The Bankruptcy Court may approve this agreement as between the IEPA and the Debtors pending public comment, but the United States shall not be bound until the public comment period has concluded. If for any reason the Bankruptcy Court should decline to approve this Settlement Agreement in the form requested, this agreement is voidable at the sole discretion of a Party and the terms of this Agreement may not be used as evidence in any litigation between the Parties.

**12. Notices.**



Whenever, under the terms of this Agreement, written notice is required to be given, or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below via U.S. mail or overnight mail, unless those individuals or their successors give notice of a change of address to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to Illinois EPA:

Erin Rednour  
Federal Site Remediation Section  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

As to the Illinois Attorney General's Office:

James L. Morgan  
Senior Assistant Attorney General  
Illinois Attorney General's Office  
500 S. Second Street  
Springfield, IL 62706

As to the EP Custodial Trust:

William L. West, Custodial Trustee  
26734 Jefferson Court  
Bay Village, OH 44140-2238

With copies to:

M. Colette Gibbons, Esq.  
Schottenstein, Zox & Dunn Co., LPA  
US Bank Centre  
1350 Euclid Avenue, Suite 1400  
Cleveland, OH 44115

Stephen P. Samuels, Esq.  
Schottenstein, Zox and Dunn Co. LPA  
P.O. Box 165020

Columbus, OH 43216

As to the United States:

Richard C. Karl  
Superfund Division Director  
USEPA Region 5-Superfund Division  
77 West Jackson Blvd. (Mail Code SR-6J)  
Chicago, IL 60604

With copies to:

Office of Regional Counsel  
USEPA Region 5  
77 West Jackson Blvd. (C-14J)  
Chicago, IL 60604  
Attention: EP Custodial Trust Bankruptcy Staff Attorney

Maria I. Cintron-Silva  
Attorney Advisor  
USEPA  
Office of Site Remediation Enforcement  
1200 Pennsylvania Ave., NW  
MC 2272A  
Washington, D.C. 20460

Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
PO Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

**13. Third Party Beneficiaries.**

The Plan Trustee, New HoldCo and the NewCos are intended to be and shall be conclusively deemed to be third party beneficiaries of Sections 7 and 8 of this Agreement.

**14. Headings.**

The headings used in this Agreement are inserted for convenience only and neither constitutes a portion of the Agreement nor in any manner affect the construction of the provisions of this Agreement.

**15. Modification.**

This Agreement may not be modified without the prior written consent of the Parties hereto or their successors in interest and the approval of the Bankruptcy Court.

**16. Jurisdiction.**

The Bankruptcy Court shall retain exclusive jurisdiction with respect to interpretation and implementation of this Agreement. Notwithstanding the foregoing and without limiting the jurisdiction of the Bankruptcy Court, with respect to a governmental unit's exercise of police or regulatory power only, the jurisdiction of any other tribunal shall not be reduced or impaired from that set forth in any applicable, valid statutory grant of jurisdiction. The foregoing statement, however, should not be construed as an acknowledgement of exclusive or preeminent jurisdiction of a tribunal other than the Bankruptcy Court in which a governmental unit may seek to exercise its police or regulatory power.

**17. Counterparty.**

This Agreement may be delivered by courier, mail, facsimile or telecopy. It may be executed in counterparts, each of which shall be deemed to be an original, and all of such counterparts taken together shall be deemed to constitute one and the same agreement.

**18. Parties Bound.**

This Agreement shall be binding upon the Parties and their respective successors and assigns. Any change in ownership or corporate status of a Party including, but not limited to,

any transfer of assets or real or personal property, shall in no way alter such Party's responsibilities under this Agreement.

**19. Signatories.**

The Assistant Attorney General for the United States, the undersigned representatives of the IEPA, and the non-Governmental Parties to this Agreement certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement.

**20. Severability.**

In the event that provisions of this Agreement shall be deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby.

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

\_\_\_\_\_  
Robert A. Messina,  
Chief Legal Counsel

DATE: \_\_\_\_\_

**LISA MADIGAN  
ATTORNEY GENERAL OF THE STATE  
OF ILLINOIS**

\_\_\_\_\_  
Thomas E. Davis, Chief  
Environmental Bureau

**EP CUSTODIAL TRUST**

\_\_\_\_\_  
William L. West, in his capacity as  
Custodial Trustee

DATE: \_\_\_\_\_

**EAGLEPICHER REPORTED  
~~EAGLEPICHER TECHNOLOGIES,~~  
~~LLC~~**

\_\_\_\_\_  
*Samuel B. Bleichenhals*  
\_\_\_\_\_  
Samuel B. Bleichenhals  
Chairman, President & CEO

DATE: 6/30/06

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

\_\_\_\_\_  
Granta Y. Nakayama  
Assistant Administrator for Enforcement  
and Compliance Assurance

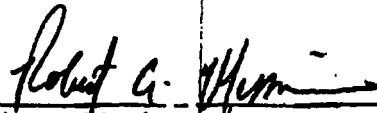
DATE: \_\_\_\_\_

**UNITED STATES DEPARTMENT OF  
JUSTICE**

\_\_\_\_\_  
Sue Ellen Wooldridge Assistant Attorney  
General

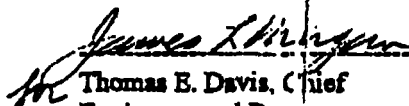
DATE: \_\_\_\_\_

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

  
Robert A. Messina,  
Chief Legal Counsel

DATE: 6/30/06

**LISA MADIGAN  
ATTORNEY GENERAL OF THE STATE  
OF ILLINOIS**

  
for Thomas E. Davis, Chief  
Environmental Bureau

**EP CUSTODIAL TRUST**

William L. West, in his capacity as  
Custodial Trustee

DATE: \_\_\_\_\_

**EAGLEPICHER TECHNOLOGIES,  
LLC**

DATE: \_\_\_\_\_

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

Granta Y. Nakayama  
Assistant Administrator for Enforcement  
and Compliance Assurance

DATE: \_\_\_\_\_

**UNITED STATES DEPARTMENT OF  
JUSTICE**

Sue Ellen Wooldridge Assistant Attorney  
General

DATE: \_\_\_\_\_

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

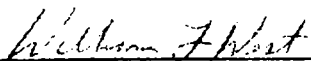
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Robert A. Messina,  
Chief Legal Counsel

DATE: \_\_\_\_\_

LISA MADIGAN  
ATTORNEY GENERAL OF THE STATE  
OF ILLINOIS

-----  
Thomas E. Davis, Chief  
Environmental Bureau

**EP CUSTODIAL TRUST**

  
\_\_\_\_\_  
William L. West, in his capacity as  
Custodial Trustee

DATE: June 30, 2006

**EAGLEPICHER INCORPORATED**  
~~**EAGLEPICHER TECHNOLOGIES,**~~  
~~**LLC**~~

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

\_\_\_\_\_  
Granta Y. Nakayama  
Assistant Administrator for Enforcement  
and Compliance Assurance

DATE: \_\_\_\_\_

**UNITED STATES DEPARTMENT OF  
JUSTICE**

\_\_\_\_\_  
Sue Ellen Wooldridge Assistant Attorney  
General

DATE: \_\_\_\_\_

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

\_\_\_\_\_  
Robert A. Messina,  
Chief Legal Counsel

DATE: \_\_\_\_\_

**LISA MADIGAN  
ATTORNEY GENERAL OF THE STATE  
OF ILLINOIS**

\_\_\_\_\_  
Thomas E. Davis, Chief  
Environmental Bureau

**EP CUSTODIAL TRUST**

\_\_\_\_\_  
William L. West, in his capacity as  
Custodial Trustee

DATE: \_\_\_\_\_

**EAGLEPICHER TECHNOLOGIES,  
LLC**

\_\_\_\_\_  
\_\_\_\_\_  
DATE: \_\_\_\_\_

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

*Granta Y. Nakayama*

\_\_\_\_\_  
Granta Y. Nakayama  
Assistant Administrator for Enforcement  
and Compliance Assurance

JUN 30 2006

DATE: \_\_\_\_\_

**UNITED STATES DEPARTMENT OF  
JUSTICE**

*[Signature]*  
\_\_\_\_\_  
Sgt Ellen Wooldridge Assistant Attorney  
General

DATE: *6/30/06*



**EXHIBIT A**

**LEGAL DESCRIPTION FOR THE GALENA, ILLINOIS SITE**

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 25; THENCE WEST 20 CHAINS, THENCE NORTH 11 CHAINS, THENCE EAST 10 CHAINS TO THE POINT OF BEGINNING; THENCE NORTH 9 CHAINS, THENCE EAST 10 CHAINS, THENCE SOUTH 9 CHAINS, THENCE WEST 10 CHAINS TO THE PLACE OF BEGINNING, ALL IN TOWNSHIP 29, NORTH OF RANGE 1, WEST OF THE FOURTH PRINCIPAL MERIDIAN IN THE COUNTY OF JO DAVIESS AND STATE OF ILLINOIS.

## **EXHIBIT B**

### **DESCRIPTION OF PLANNED SCOPE OF WORK FOR THE GALENA, ILLINOIS SITE**

**This document sets forth the general Scope of Work ("SOW") that will be implemented at the Galena, Illinois Site. Due to the limited data available at the time this SOW was prepared, the work to be performed may be expanded or otherwise modified based on additional information gathered during the Site Investigation Phase, or otherwise. In connection with the review and approval of the plans and reports submitted by the Custodial Trustee, the Lead Agency shall consult with the other Governmental Party in accordance with Section 4 (c) of the Settlement Agreement.**

#### ***Site Investigation***

A Site Investigation Plan will be prepared by the Custodial Trustee and submitted to the Governmental Parties for review, and approval by the Lead Agency. Conceptually, the Site Investigation Plan will include, but is not limited to, the following:

- Performance of a ground penetrating radar (GPR) survey to investigate topographic features that suggest potential soil or groundwater contamination;
- Collection of surface soil samples using a broad grid system southwest of the tributary of Millbrig Creek that transects the northeast portion of the property and outside of the drainage way;
- Collection of soil samples using a tighter grid system within the former lead storage pad area and the drainage way;
- Collection of samples of the sediment in the stream bed and of the surface water on the Property;
- Collection of samples from previously identified drum areas, including the remnant basement foundation located on the southeastern portion of the property described in the May 15, 2006 ENVIRON International Corporation Declaration;
- Installation of temporary shallow monitoring wells to sample the shallow groundwater, if present, in the vicinity of the drainage way;
- Soil probes to further investigate the results of the GPR survey, as necessary;

- Field analysis of all soil, sediment and surface water samples for total lead and total zinc (i.e. XRF);
- Laboratory analysis of a subset of all the soil, sediment and surface water samples for total RCRA metals and zinc;
- Laboratory analysis of a subset of the soil samples from the previously identified drum areas, including the remnant basement foundation located on the southeastern portion of the Property, for a full-scan of constituents of concern (i.e. total RCRA metals and zinc, total volatile organic compounds (VOCs), total semi-volatile organic compounds (SVOCs), total pesticides, total herbicides, cyanide and PCBs);
- Collection and analysis of groundwater samples collected from the temporary monitoring wells for total VOCs and total RCRA metals and zinc, if ground water is present; and
- Preparation of a risk assessment, as appropriate, to determine risk based cleanup objectives for the Site.

Upon approval of the Site Investigation Plan by the Lead Agency, the Site Investigation Plan will be implemented by the Custodial Trustee. Following implementation of the Site Investigation Plan, the Custodial Trustee will prepare a Site Investigation Report (which shall include the risk assessment, if performed). The Site Investigation Report will be submitted by the Custodial Trustee to the Governmental Parties for review, and approval by the Lead Agency.

#### ***Site Remediation***

Appropriate site remediation will be initially determined by the Custodial Trustee after reviewing the site investigation, risk assessment and cleanup objectives for the site. A Remedial Action Work Plan—designed to achieve the site remediation objectives— will be prepared by the Custodial Trustee and submitted to the Governmental Parties for review, and approval by the Lead Agency. Anticipated site remediation activities may include but are not limited to the following:

- Removal of contaminated soil at the former lead storage pad area and in the drainage way and at other areas exhibiting constituent concentrations in soil above cleanup objectives;
- Removal of contaminated sediment above cleanup objectives from the stream bed on the Property and repair as needed;
- Confirmation sampling and analysis to determine attainment of cleanup objectives;
- Proper disposal of contaminated soil and sediment;

- Re-grading, contouring and backfilling, as necessary, of the drainage way;
- Installation of silt fencing;
- Vegetation of areas in the drainage way;
- Removal of drums, including those in the remnant basement foundation in the southeast portion of the property described in the May 15, 2006 ENVIRON International Corporation Declaration;
- Closure of mine ventilation shafts;
- Operation and maintenance including, as necessary, fertilizing and re-seeding of the revegetated portions of the remediated property during the three years following completion of that portion of the remedial activities
- Performance of NPDES permit annual inspections for three years; and
- Establish, maintain and enforce institutional controls (including a restrictive covenant to restrict land use), as appropriate.

Upon approval of the Remedial Action Work Plan, the Plan will be implemented by the Custodial Trustee. Upon completion of the remediation activities, the Custodial Trustee will submit a Remediation Report to the Governmental Parties for review, and approval by the Lead Agency.

**EXHIBIT C**

**FORM CUSTODIAL TRUST AGREEMENT**

**EP CUSTODIAL TRUST AGREEMENT**

**DATED JUNE \_\_ 2006**

## TABLE OF CONTENTS

<b>RECITALS .....</b>	<b>1</b>
<b>ARTICLE I DEFINITIONS .....</b>	<b>4</b>
1.1 Definitions .....	4
<b>ARTICLE II THE TRUST .....</b>	<b>8</b>
2.1 Creation and Funding of Custodial Trust Accounts .....	8
2.2 Objective and Purpose .....	12
2.3 Determination and Implementation of Environmental Actions.....	14
2.4 Distributions to the Beneficiaries During the Custodial Trust Term.....	16
2.5 Assignment of Interests in Custodial Trust.....	18
2.6 Future Disposition of the Property.....	19
2.7 Termination of Custodial Trust and Release and Discharge of Custodial Trustee.....	20
<b>ARTICLE III ADMINISTRATION .....</b>	<b>22</b>
3.1 Investment of Custodial Trust Assets .....	22
3.2 Environmental Information, Budgets and Reports .....	23
3.3 Custodial Trust Accounts.....	25
3.4 Manner of Payment.....	25
3.5 Tax Matters .....	25
3.6 Other .....	26
<b>ARTICLE IV CUSTODIAL TRUSTEE .....</b>	<b>26</b>
4.1 Appointment .....	26
4.2 Resignation .....	26
4.3 Removal and Turnover of Funding.....	27

4.4	Acceptance of Appointment by Successor Trustees.....	27
4.5	Administrative Powers.....	28
4.6	Third Party Service Providers.....	29
4.7	Other Activities.....	30
4.8	Limitation of Custodial Trustee's Authority.....	30
4.9	Reliance by Custodial Trustee.....	30
4.10	Compensation and Administrative Costs of the Custodial Trustee.....	31
4.11	Bond.....	31
	<b>ARTICLE V RIGHTS AND LIABILITY OF PARTIES.....</b>	<b>32</b>
5.1	Liability of Custodial Trustee.....	32
5.2	Release; Exculpation.....	34
5.3	Dispute Resolution.....	35
	<b>ARTICLE VI MISCELLANEOUS PROVISIONS.....</b>	<b>37</b>
6.1	Intention of Parties to Establish a Disputed Ownership Fund.....	37
6.2	Preservation of Privilege.....	37
6.3	Cooperation.....	37
6.4	Prevailing Party.....	38
6.5	Laws as to Construction.....	38
6.6	Severability.....	38
6.7	Sufficient Notice.....	39
6.8	Headings.....	44
6.9	Actions Taken on Other Than Business Day.....	44
6.10	Consistency of Agreements; Construction.....	44



6.11	Amendment of Trust.....	44
6.12	Jurisdiction.....	45

## **EXHIBITS**

Exhibit A	Properties .....	A-1 to A-13
Exhibit B	Custodial Trust Accounts.....	B

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>In re:</b>	) Chapter 11
	)
<b>Eagle-Picher Holdings, Inc. et al.,</b>	) Jointly Administered
	) Case No. 05-12601
<b>Debtors.</b>	)
	) Judge Vincent J. Aug, Jr.

**SETTLEMENT AGREEMENT**

WHEREAS, on April 11, 2005, Eagle-Picher Holdings, Inc. and certain of its affiliates<sup>1</sup> (each a "Debtor," and collectively, the "Debtors"), debtors and debtors in possession filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as amended (the "Bankruptcy Code"), which cases are being jointly administered under Case No. 05-12601 (the "Bankruptcy Cases");

WHEREAS, on May 31, 2006, Debtors filed Debtors' Second Amended Joint Plan of Reorganization (Doc. No. 2114) (as it may be amended from time to time, the "Plan");

WHEREAS, On June 28, 2006, the Bankruptcy Court entered the Confirmation Order (Docket No.2189) pursuant to which the Bankruptcy Court confirmed the Debtors' Plan;

WHEREAS, Section 5.12 of the Plan provides for the creation of the EP Custodial Trust, to, *inter alia*, own certain specified real property referred to as the Designated Property and the Transitional Property and manage and/or fund the applicable Environmental Costs of the Environmental Actions, lease the Transitional Property pursuant to the TP Leases and ultimately sell, transfer or otherwise dispose of the Designated Property and the Transitional Property to one or more third parties.

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<sup>1</sup> The affiliated debtor entities are EaglePicher Incorporated, EaglePicher Technologies LLC, EaglePicher Filtration & Minerals, LLC, EaglePicher Pharmaceutical Services, LLC, EaglePicher Automotive, Inc., Daisy Parts, Inc. and Carpenter Enterprises Limited.

WHEREAS, pursuant to Section 5.12 of the Plan, the EP Custodial Trust will be funded in amounts the Bankruptcy Court determined, and in the case of Designated Property and Transitional Property located in the States of Kansas, Oklahoma, Illinois and Michigan, the United States and the States of Kansas, Oklahoma, Illinois and Michigan agree for settlement purposes, are sufficient to pay the Environmental Costs of the Designated Property and the Transitional Property and to administer the EP Custodial Trust;

WHEREAS, the EP Custodial Trust shall be created and governed by the terms the Custodial Trust Agreement, which, among other things, contemplates the creation of multiple segregated Custodial Trust Accounts to own, manage and fund Environmental Costs related to the Designated Property and Transitional Property under the Plan;

WHEREAS, the Illinois Custodial Trust Account will own the real property specified in Exhibit C of the Plan and more specifically described in Exhibit A to the Custodial Trust Agreement (the "Illinois Property"), which is known individually to the Parties as the "Galena Site." For ease of reference, the legal description of the Galena Site is reproduced in "Exhibit A" attached hereto and incorporated by reference herein;

WHEREAS, the Illinois Environmental Protection Agency and the United States on behalf of the Environmental Protection Agency (collectively, "Governmental Parties") allege that Debtors have liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), and similar state statutes, and federal and state regulations promulgated thereunder, for response actions and/or response costs for investigations and remediation actions and/or investigations and remediation costs with respect to the Illinois Property;

WHEREAS, in the absence of this Settlement Agreement, the Debtors would dispute the allegations of the Governmental Parties and would object, in whole or in part, to any claims that the Governmental Parties may file with respect to the Illinois Property;

WHEREAS, in the absence of this Settlement Agreement, the Governmental Parties would dispute the amounts that Debtors would otherwise propose to fund the Illinois Custodial Trust Account and would object to confirmation of the Plan on the ground that it is not feasible and is forbidden by law;

WHEREAS, the Debtors seek to obtain protection, through the resolution of environmental liabilities with respect to the Illinois Property as provided herein, from and against all claims, causes of action, remedies or otherwise under CERCLA, or similar state statutes and federal and state regulations promulgated thereunder, that have been or may in the future be asserted for response actions and/or response costs for investigations and remediation actions and/or investigations and remediation costs; and

WHEREAS, the Debtors' and the Government Parties hereto, without admission of liability by the Debtors, desire to settle, compromise and resolve the claims and contentions of the Governmental Parties regarding the Illinois Property as provided herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the Parties hereto, subject to approval by the Bankruptcy Court, as follows:

1. **Definitions.**

Capitalized Terms used but not otherwise defined herein shall have the respective meanings given, as applicable, in the Custodial Trust Agreement and Plan. The following terms as used in this Agreement shall have the definitions given below:

**"Agreement"** shall mean this Settlement Agreement.

**"Bankruptcy Cases"** shall have the meaning set forth in the recitals to this Agreement.

**"Bankruptcy Code"** shall have the meaning set forth in the recitals to this Agreement.

**"Bankruptcy Court"** shall mean the court in the Southern District of Ohio, Western Division, conferred with authority over the Bankruptcy Cases or the court so authorized with respect to any proceedings in connection therewith for the purpose of such proceedings.

**"Budget"** shall have the meaning set forth in Section 4(a) of this Agreement.

**"CERCLA"** shall have the meaning set forth in the recitals to this Agreement.

**"Covenant Parties"** shall have the meaning set forth in Section 7(a) of this Agreement.

**"Custodial Trust Accounts"** shall have the meaning set forth in the Custodial Trust Agreement.

**"Custodial Trustee"** shall mean William L. West, but solely in his capacity as custodial trustee of the EP Custodial Trust, and any successor thereto chosen in accordance with the Custodial Trust Agreement.

**"Custodial Trust Parties"** shall mean the Custodial Trustee and any member, employee, officer, director, and the professionals and attorneys of the Custodial Trustee, but not the EP Custodial Trust.

**"Debtors"** shall have the meaning set forth in the recitals to this Agreement.

**"Effective Date"** shall mean the Effective Date of the Plan, as defined therein.

**"Environmental Actions"** shall mean investigation, remediation, response, closure and post-closure actions to the extent required by applicable law, including bankruptcy law and Environmental Law, and those actions agreed to be performed under this Settlement Agreement, and, if and to the extent that funds are available in the applicable Custodial Trust Account, such other response actions as the Custodial Trustee, after consultation with the Lead Agency, determines would facilitate the sale, transfer or other disposition of the Illinois Property.

**"Environmental Costs"** shall mean the costs and expenses of implementing Environmental Actions.

**"Environmental Law"** means any applicable federal, state or local law, statute, ordinance, rule, regulation or code, any license, permit, authorization, administrative or court order, judgment, decree or injunction, including all common law, related to pollution, protection of health, safety or the environment, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of pollutants or toxic or Hazardous Substances, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, *et seq.*; the Clean Air Act, as amended, 42 U.S.C. Section 7401, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f, *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. 651, *et seq.*

**"EP Custodial Trust"** shall mean the custodial trust established under the Custodial Trust Agreement consistent with Section 5.12(a) of the Plan.

**"Governmental Parties"** shall mean the United States on behalf of the USEPA and the Illinois Environmental Protection Agency on its own behalf.

**"Hazardous Substances"** shall mean all materials, substances or wastes defined, designated, regulated or classified as hazardous, toxic or radioactive, under any applicable Environmental Laws, whether by type or by quantity, and petroleum or any derivative or by-product thereof.

**"IEPA"** shall mean the Illinois Environmental Protection Agency and any successor departments or agencies thereof.

**"Illinois Custodial Trust Account"** shall mean the Custodial Trust Account created to own the Illinois Property and the Funding to perform the Environmental Actions with respect to Illinois Property.

**"Illinois Property"** shall have the meaning set forth in the recitals to this Agreement.

**"Lead Agency"** shall have the meaning set forth in Section 3(c) of this Agreement.

**"NewCo"** shall mean individually, and **"NewCos"** shall mean collectively, the direct and indirect subsidiaries of New HoldCo to be formed in conjunction with the Plan and identified on Exhibit D to the Plan.

**"New HoldCo"** shall mean the holding company formed in conjunction with the Plan, the common stock of which will constitute a portion of the Plan Consideration that will be paid to the Debtors pursuant to the Purchase Agreements and which, pursuant to the Plan, will in turn be distributed to creditors of the Debtors.

**"Parties"** shall mean the United States on behalf of the USEPA, the Illinois Environmental Protection Agency on its own behalf, the Debtors and the Custodial Trustee.

**"Plan"** shall have the meaning set forth in the recitals of this Agreement.

**"Plan Trust"** shall have the meaning set forth in Article VI of the Plan.

**"Response Date"** shall have the meaning set forth in Section 4(a) of this Agreement.

**"Settlers"** shall mean EaglePicher Incorporated, EaglePicher Technologies LLC, EaglePicher Automotive, Inc., Daisy Parts, Inc. and Carpenter Enterprises Limited.

**"United States"** shall mean the United States of America, including USEPA, the Department of Justice, and all of the United States' agencies, departments, and instrumentalities.

**"USEPA"** shall mean the United States Environmental Protection Agency and any successor departments or agencies thereof.

**2. Formation and Purpose of the EP Custodial Trust.**

On the Effective Date, the EP Custodial Trust shall be established pursuant to the terms of the Plan and more specifically the Custodial Trust Agreement, which shall be substantially in the form attached hereto as "Exhibit C." The purpose of the EP Custodial Trust is as set forth in the Custodial Trust Agreement.

**3. The Illinois Custodial Trust Account.**

(a) **Funding.** The Illinois Custodial Trust Account shall be funded with the aggregate sum of \$1,150,000 in Cash Funding on the Effective Date pursuant to Section 2.1 of the Custodial Trust Agreement. The general administration of the EP Custodial Trust shall be funded out of the Administration Custodial Trust Account created for that purpose. General administrative costs do not include costs incurred by the IEPA for oversight, which shall be remitted from the Illinois Custodial Trust Accounts pursuant to Section 3(e) of this Agreement.



(b) [Intentionally left blank]

(c) Lead Agency. IEPA shall be the "Lead Agency" with primary oversight authority among the Governmental Parties over the EP Custodial Trust's implementation of Environmental Actions at the Illinois Property; *provided, however,* that the Lead Agency may be substituted upon the delivery of written notice, signed by USEPA and IEPA, to the Custodial Trustee and the Parties.

(d) Approval of Environmental Costs. The Custodial Trustee shall use the Illinois Custodial Trust Account only to fund the respective Environmental Costs of the Illinois Property held in the EP Custodial Trust consistent with the Budgets prepared in accordance with Section 4 of this Agreement.

(e) Reimbursement of Oversight Costs. The Custodial Trustee shall pay funds from the applicable Illinois Custodial Trust Account to the Lead Agency within thirty (30) days of the Lead Agency's request to reimburse it for reasonable oversight costs incurred by the Lead Agency as to the Illinois Property.

4. Supplemental Provisions to Custodial Trust Agreement.

(a) Budget. The Custodial Trustee shall provide the Lead Agency with an annual itemized budget of projected Environmental Costs (the "Budget") pursuant to the timetable set forth in the Custodial Trust Agreement, *provided however,* that the Custodial Trustee shall deliver the Budget by regular U.S. mail to the Lead Agency and the other Governmental Party as provided in Section 12 of this Agreement. The Lead Agency shall review the Budget, consult with the other Governmental Party, and may comment on or object to the Budget within twenty (20) business days of mailing by the Trustee (the "Response Date"). Upon receipt of such comments or objection, the Lead Agency and the Custodial Trustee shall promptly meet and

confer to attempt to resolve their differences regarding the Budget. If they are unable to resolve their differences, either Party may utilize the dispute resolution procedures prescribed by Section 5.3 of the Custodial Trust Agreement.

(b) Site Specific Environmental Actions and Other actions. Subject to the availability of funds in the applicable Custodial Trust Account, the Custodial Trustee shall perform (i) the actions described in Exhibit B hereto (which the Parties agree are Environmental Actions), (ii) such other Environmental Actions, if any, that are required by applicable law, including bankruptcy and Environmental Law and (iii) provided funds are or will be available in the applicable Custodial Trust Account following the performance of the Environmental Actions prescribed by (i) and (ii) above, such other actions as the Custodial Trustee, after consultation with the Lead Agency, determines would facilitate the sale, transfer or other disposition of the Illinois Property.

(c) Lead Agency Consultation with the Other Governmental Party. In connection with the review and approval of the Site Investigation Plan, the Remedial Action Work Plan and the Remediation Report, the Lead Agency shall consult with the other Governmental Party. The Lead Agency may consult with the other Governmental Party as necessary from time to time in the course of its review of an aspect of its review and approval of the Environmental Actions under this Agreement.

(d) Disposition of Illinois Property. Nothing in this Agreement or the Custodial Trust Agreement, including, without limitation, Section 2.6(c) thereof, (collectively "These Agreements") shall be construed to require the Governmental Parties to take title to or possession of the Illinois Property or any portion thereof; *provided, however*, that These Agreements shall not be construed to modify, abrogate or otherwise affect the statutes,

regulations or rules of practice of the Bankruptcy Court pertaining to the disposition of the Illinois Property.

**5. Continued Operation.**

The applicable Settlor shall continue, at its own expense, the operations of any on-site systems, monitoring systems, and other ongoing environmental activities, if any, with respect to the Illinois Property through the Effective Date.

**6. Access and Restrictive Easements and Covenants.**

The Custodial Trustee shall provide the Lead Agency and its authorized representatives reasonable access to the Illinois Property for the purposes of inspecting and monitoring implementation of the Environmental Actions, including examining and gathering data consistent with applicable law. Further, the Custodial Trustee shall place restrictive easements and covenants and implement any institutional controls with respect to the Illinois Property, if any, consistent with Exhibit B.

**7. Covenants Not to Sue.**

(a) United States' Covenant Not to Sue. In consideration of the actions that will be performed pursuant to this Agreement, the United States on behalf of USEPA and Department of Justice covenants not to bring a civil judicial or civil administrative action or take any other civil action against Debtors, Plan Trust, New HoldCo, NewCos, the Custodial Trust Parties and the EP Custodial Trust (the "Covenant Parties") under CERCLA and regulations promulgated thereunder with respect to the Illinois Property; *provided, however*, nothing herein shall relieve any Covenant Party of any liability for any new acts by such Party after the Effective Date to the extent such acts (including operation or ownership of the Property after the Effective Date) create liability under Environmental Laws with respect to the Illinois Property; *provided*,

*however*, that mere ownership of the Illinois Property by the EP Custodial Trust after the Effective Date shall not constitute a “new act” creating liability. For the avoidance of doubt, the issuance, support, and continued maintenance of letters of credit or other Funding that may be provided under Section 2.1(b) of the Custodial Trust Agreement by or at the direction of the New HoldCo and/or any of the NewCos shall not constitute a “new act” giving rise to liability. The United States reserves all rights relating to enforcement of the requirements of this Agreement consistent with the requirements of the Custodial Trust Agreement. The Covenant Parties shall be deemed to have resolved their civil liability as provided herein under CERCLA and regulations promulgated thereunder to the United States with respect to the Illinois Property. The United States’ covenant not to sue each Covenant Party is conditioned upon the satisfactory performance by that Covenant Party of its obligations under this Agreement.

(b) IEPA’s Covenant Not to Sue. In consideration of the actions that will be performed pursuant to this Agreement, the IEPA on its own behalf covenants not to bring a civil judicial or civil administrative action or take any other civil action against the Covenant Parties under CERCLA and regulations promulgated thereunder and any other applicable state environmental statute or regulation, including, but not limited to, the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* with respect to the Illinois Property; *provided, however*, nothing herein shall relieve any Covenant Party of any liability for any new acts by such Party after the Effective Date to the extent such acts (including operation or ownership of the Property after the Effective Date) create liability under Environmental Laws with respect to the Illinois Property; *provided, however*, that mere ownership of the Illinois Property by the EP Custodial Trust after the Effective Date shall not constitute a “new act” creating liability. For the avoidance of doubt, the issuance, support, and continued maintenance of letters of credit or other

Funding that may be provided under Section 2.1(b) of the Custodial Trust Agreement by or at the direction of the New HoldCo and/or any of the NewCos shall not constitute a "new act" giving rise to liability. The IEPA reserves all rights relating to enforcement of the requirements of this Agreement consistent with the Custodial Trust Agreement. The Covenant Parties shall be deemed to have resolved their civil liability as provided herein under CERCLA and regulations promulgated thereunder and any other applicable state environmental statute or regulation, including, but not limited to, the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* to the IEPA with respect to the Illinois Property. The IEPA's covenant not to sue each Covenant Party is conditioned upon the satisfactory performance of that Covenant Party of its obligations under this Agreement.

(c) Successor Protection. Without limiting any discharge, release, or injunction afforded as a result of orders or actions of the Bankruptcy Court, the covenants not to sue and exceptions thereto above shall also apply to Debtors' successors, assigns, employees, officers, and directors but only to the extent that the alleged liability of such successor, assign, employee, officer, or director is based upon its respective status as a successor, assign, employee, officer, or director, and not to the extent that the alleged liability arose independently of the alleged liability of Debtors.

(d) Debtors' and Custodial Trustee's Covenant Not to Sue. Debtors and the Custodial Trustee covenant not to sue and the Plan and/or Confirmation Order shall provide that the Plan Trust, New HoldCo and NewCos covenant not to sue, the United States and all of their departments, agencies, and instrumentalities or the IEPA for contribution or reimbursement for Environmental Actions and Environmental Costs with respect to the Illinois Property, including but not limited to:

(i) any direct or indirect claim for reimbursement from the Hazardous Substances Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law or similar funds of the IEPA;

(ii) any claims against the United States or the IEPA, and any of their departments, agencies, and instrumentalities under CERCLA Sections 107 or 113 or similar State statutes related to the Illinois Property; *provided, however*, nothing herein shall relieve any Covenant Party of any liability for any new acts by such Party after the Effective Date to the extent such acts (including operation or ownership of the Property after the Effective Date) create liability under Environmental Laws with respect to the Illinois Property; *provided, however*, that mere ownership of the Illinois Property by the EP Custodial Trust after the Effective Date shall not constitute a “new act” creating liability. For the avoidance of doubt, the issuance, support, and continued maintenance of letters of credit or other Funding that may be provided under Section 2.1(b) of the Custodial Trust Agreement by or at the direction of the New HoldCo and/or any of the NewCos shall not constitute a “new act” giving rise to liability; and

(iii) any claims arising out of Environmental Actions at or in connection with the Illinois Property, including any claim under the United States Constitution, the Constitution of the State, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

(e) Reservations of Rights. Notwithstanding any provision of this Agreement, the United States and the IEPA retain all access authorities and rights and information gathering authorities and rights with respect to the Illinois Property, including enforcement authorities

related thereto, under CERCLA and similar state statutes, and any other applicable statute or regulations.

Debtors, Plan Trust, New HoldCo, NewCos and the Custodial Trustee reserve all rights relating to enforcement of the provisions of this Agreement consistent with Section 13 of this Agreement and the Custodial Trust Agreement.

Nothing in this Agreement shall excuse the EP Custodial Trust from any disclosure or notification requirements imposed by CERCLA or any other applicable federal or state law or regulation. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA or 40 C.F.R. § 300.700(d).

In the event of any action or occurrence during the performance of the work which causes or threatens a release of Hazardous Substances from the site that constitutes an emergency situation or a situation that presents an immediate threat to public health or welfare or the environment, the Custodial Trustee shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. In the event that the Custodial Trustee fails to take appropriate response action, the Lead Agency may take appropriate response action as required by this Section and the Custodial Trustee, with the approval of the Bankruptcy Court upon application by the Lead Agency with respect thereto, shall reimburse the Lead Agency for all costs of the response action necessary to prevent, abate or minimize the release or threat of release.

Nothing in this Agreement shall be deemed to limit the authority of the Governmental Parties to take response action under Section 104 of CERCLA or any other applicable law or regulation; *provided, however*, that if either or both of the Governmental Parties does take such response action at or with regard to the Illinois Property, the Governmental Parties shall not seek

and shall not be entitled to recover any response or similar costs associated with such response action from the Debtors, Plan Trust, New HoldCo, the NewCos, the Custodial Trust Parties and the EP Custodial Trust; *provided further*, that the foregoing sentence shall not be construed to limit or be in derogation of the rights of the Governmental Parties under Section 4.3 of the Custodial Trust Agreement, the preceding paragraph of this Section 7(e) or the exceptions set forth in Sections 7(a), (b) and (d) for new acts.

**8. Contribution Protection/Third Parties.**

The Covenant Parties have resolved their liability, if any, under CERCLA and similar state statutes and federal and state regulations promulgated thereunder as provided herein and are entitled to protection from contribution actions or claims as provided by CERCLA § 113(f)(2) for matters addressed by this Agreement. Neither the Plan Trust nor New HoldCo or any of the NewCos shall have any liability to any party for the Environmental Actions, subject to the exceptions set forth in Section 7(a) and (b) above for new acts. Matters addressed by this Agreement for purposes of contribution protection shall include all claims or causes of action under CERCLA and regulations promulgated thereunder and similar state statutes and regulations, including the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, with respect to the Illinois Property.

**9. Proofs of Claim and Administrative Expenses.**

Any proofs of claim and requests for administrative expenses against the Debtors with respect to the Illinois Property described in this Agreement are withdrawn with prejudice and expunged as resolved by the terms herein upon the Effective Date and the IEPA and the United States shall not be entitled to any distributions from the Settlers' estates with respect to the Illinois Property, except the funding described in Section 3 of this Agreement and the applicable



provisions of the Custodial Trust Agreement. All other proofs of claim not related to the Illinois Property remain unaffected by this Agreement.

**10. Liability of the EP Custodial Trust and the Custodial Trust Parties.**

The EP Custodial Trust and the Custodial Trust Parties shall be afforded all of the protections provided for in this Agreement and the Custodial Trust Agreement.

**11. Approval and Public Comment.**

Consent and approval of this Agreement by the United States is subject to public comment in accordance with Section 122(d)(2) of CERCLA and 28 §CFR 50.7. This Agreement will be lodged with the Bankruptcy Court and submitted for public comment. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Agreement disclose factors or considerations which indicate that this Agreement is inappropriate, improper, or inadequate. The United States agrees to consider an expedited public comment period for this Agreement. All other Parties consent to entry of this Agreement without further notice, except that this Agreement shall not become effective until participation of the Debtors is approved by the Bankruptcy Court and the Effective Date of the Plan. The Debtors will promptly seek the approval of the Bankruptcy Court of their entry into this Agreement in accordance with Bankruptcy Rule 9019. The Bankruptcy Court may approve this agreement as between the IEPA and the Debtors pending public comment, but the United States shall not be bound until the public comment period has concluded. If for any reason the Bankruptcy Court should decline to approve this Settlement Agreement in the form requested, this agreement is voidable at the sole discretion of a Party and the terms of this Agreement may not be used as evidence in any litigation between the Parties.

**12. Notices.**

Whenever, under the terms of this Agreement, written notice is required to be given, or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below via U.S. mail or overnight mail, unless those individuals or their successors give notice of a change of address to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

**As to Illinois EPA:**

Erin Rednour  
Federal Site Remediation Section  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

**As to the Illinois Attorney General's Office:**

James L. Morgan  
Senior Assistant Attorney General  
Illinois Attorney General's Office  
500 S. Second Street  
Springfield, IL 62706

**As to the EP Custodial Trust:**

William L. West, Custodial Trustee  
26734 Jefferson Court  
Bay Village, OH 44140-2238

**With copies to:**

M. Colette Gibbons, Esq.  
Schottenstein, Zox & Dunn Co., LPA  
US Bank Centre  
1350 Euclid Avenue, Suite 1400  
Cleveland, OH 44115

Stephen P. Samuels, Esq.  
Schottenstein, Zox and Dunn Co. LPA  
P.O. Box 165020

Columbus, OH 43216

As to the United States:

Richard C. Karl  
Superfund Division Director  
USEPA Region 5-Superfund Division  
77 West Jackson Blvd. (Mail Code SR-6J)  
Chicago, IL 60604

With copies to:

Office of Regional Counsel  
USEPA Region 5  
77 West Jackson Blvd. (C-14J)  
Chicago, IL 60604  
Attention: EP Custodial Trust Bankruptcy Staff Attorney

Maria I. Cintron-Silva  
Attorney Advisor  
USEPA  
Office of Site Remediation Enforcement  
1200 Pennsylvania Ave., NW  
MC 2272A  
Washington, D.C. 20460

Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
PO Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

**13. Third Party Beneficiaries.**

The Plan Trustee, New HoldCo and the NewCos are intended to be and shall be conclusively deemed to be third party beneficiaries of Sections 7 and 8 of this Agreement.

**14. Headings.**

The headings used in this Agreement are inserted for convenience only and neither constitutes a portion of the Agreement nor in any manner affect the construction of the provisions of this Agreement.

**15. Modification.**

This Agreement may not be modified without the prior written consent of the Parties hereto or their successors in interest and the approval of the Bankruptcy Court.

**16. Jurisdiction.**

The Bankruptcy Court shall retain exclusive jurisdiction with respect to interpretation and implementation of this Agreement. Notwithstanding the foregoing and without limiting the jurisdiction of the Bankruptcy Court, with respect to a governmental unit's exercise of police or regulatory power only, the jurisdiction of any other tribunal shall not be reduced or impaired from that set forth in any applicable, valid statutory grant of jurisdiction. The foregoing statement, however, should not be construed as an acknowledgement of exclusive or preeminent jurisdiction of a tribunal other than the Bankruptcy Court in which a governmental unit may seek to exercise its police or regulatory power.

**17. Counterparts.**

This Agreement may be delivered by courier, mail, facsimile or telecopy. It may be executed in counterparts, each of which shall be deemed to be an original, and all of such counterparts taken together shall be deemed to constitute one and the same agreement.

**18. Parties Bound.**

This Agreement shall be binding upon the Parties and their respective successors and assigns. Any change in ownership or corporate status of a Party including, but not limited to,

any transfer of assets or real or personal property, shall in no way alter such Party's responsibilities under this Agreement.

**19. Signatories.**

The Assistant Attorney General for the United States, the undersigned representatives of the IEPA, and the non-Governmental Parties to this Agreement certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement.

**20. Severability.**

In the event that provisions of this Agreement shall be deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby.

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

\_\_\_\_\_  
Robert A. Messina,  
Chief Legal Counsel

DATE: \_\_\_\_\_

**LISA MADIGAN  
ATTORNEY GENERAL OF THE STATE  
OF ILLINOIS**

\_\_\_\_\_  
Thomas E. Davis, Chief  
Environmental Bureau

**EP CUSTODIAL TRUST**

\_\_\_\_\_  
William L. West, in his capacity as  
Custodial Trustee

DATE: \_\_\_\_\_

**EAGLEPICKER INCORPORATED  
~~EAGLEPICKER TECHNOLOGIES,~~  
~~LLC~~**

\_\_\_\_\_  
*Samuel B. Reichenthal*  
\_\_\_\_\_  
Samuel B. Reichenthal  
\_\_\_\_\_  
Chairman, President & CEO

DATE: 6/30/06

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

\_\_\_\_\_  
Granta Y. Nakayama  
Assistant Administrator for Enforcement  
and Compliance Assurance


DATE: \_\_\_\_\_

**UNITED STATES DEPARTMENT OF  
JUSTICE**

\_\_\_\_\_  
Sue Ellen Wooldridge Assistant Attorney  
General

DATE: \_\_\_\_\_

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

  
Robert A. Messina,  
Chief Legal Counsel

DATE: 6/30/06

LISA MADIGAN  
ATTORNEY GENERAL OF THE STATE  
OF ILLINOIS

  
for Thomas E. Davis, Chief  
Environmental Bureau

EP CUSTODIAL TRUST

William L. West, in his capacity as  
Custodial Trustee

DATE: \_\_\_\_\_

EAGLEPICHER TECHNOLOGIES,  
LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

Granta Y. Nakayama  
Assistant Administrator for Enforcement  
and Compliance Assurance

DATE: \_\_\_\_\_

UNITED STATES DEPARTMENT OF  
JUSTICE

Sue Ellen Wooldridge Assistant Attorney  
General

DATE: \_\_\_\_\_

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

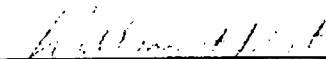
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Robert A. Messina,  
Chief Legal Counsel

DATE: \_\_\_\_\_

**LISA MADIGAN  
ATTORNEY GENERAL OF THE STATE  
OF ILLINOIS**

-----  
Thomas E. Davis, Chief  
Environmental Bureau

**EP CUSTODIAL TRUST**

  
\_\_\_\_\_  
William L. West, in his capacity as  
Custodial Trustee

DATE: Jan 14, 2004

**EAGLEPICKER INCORPORATED**  
~~**EAGLEPICKER TECHNOLOGIES,**~~  
~~**LLC**~~

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

\_\_\_\_\_  
Grania Y. Nakayama  
Assistant Administrator for Enforcement  
and Compliance Assurance

DATE: \_\_\_\_\_

**UNITED STATES DEPARTMENT OF  
JUSTICE**

\_\_\_\_\_  
Sue Ellen Wooldridge Assistant Attorney  
General

DATE: \_\_\_\_\_



**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

\_\_\_\_\_  
Robert A. Messina,  
Chief Legal Counsel

DATE: \_\_\_\_\_

LISA MADIGAN  
ATTORNEY GENERAL OF THE STATE  
OF ILLINOIS

\_\_\_\_\_  
Thomas E. Davis, Chief  
Environmental Bureau

**EP CUSTODIAL TRUST**


\_\_\_\_\_  
William L. West, in his capacity as  
Custodial Trustee

DATE: \_\_\_\_\_

**EAGLEPICHER TECHNOLOGIES,  
LLC**

\_\_\_\_\_  
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\_\_\_\_\_  
DATE: \_\_\_\_\_

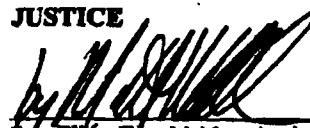
**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

  
\_\_\_\_\_  
Granta Y. Nakayama  
Assistant Administrator for Enforcement  
and Compliance Assurance

JUN 30 2006

DATE: \_\_\_\_\_

**UNITED STATES DEPARTMENT OF  
JUSTICE**

  
\_\_\_\_\_  
Sp6 Ellen Wooldridge Assistant Attorney  
General

DATE: 6/30/06

**EXHIBIT A**

**LEGAL DESCRIPTION FOR THE GALENA, ILLINOIS SITE**

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 25; THENCE WEST 20 CHAINS, THENCE NORTH 11 CHAINS, THENCE EAST 10 CHAINS TO THE POINT OF BEGINNING; THENCE NORTH 9 CHAINS, THENCE EAST 10 CHAINS, THENCE SOUTH 9 CHAINS, THENCE WEST 10 CHAINS TO THE PLACE OF BEGINNING, ALL IN TOWNSHIP 29, NORTH OF RANGE 1, WEST OF THE FOURTH PRINCIPAL MERIDIAN IN THE COUNTY OF JO DAVIESS AND STATE OF ILLINOIS.

## **EXHIBIT B**

### **DESCRIPTION OF PLANNED SCOPE OF WORK FOR THE GALENA, ILLINOIS SITE**

**This document sets forth the general Scope of Work ("SOW") that will be implemented at the Galena, Illinois Site. Due to the limited data available at the time this SOW was prepared, the work to be performed may be expanded or otherwise modified based on additional information gathered during the Site Investigation Phase, or otherwise. In connection with the review and approval of the plans and reports submitted by the Custodial Trustee, the Lead Agency shall consult with the other Governmental Party in accordance with Section 4 (c) of the Settlement Agreement.**

#### ***Site Investigation***

**A Site Investigation Plan will be prepared by the Custodial Trustee and submitted to the Governmental Parties for review, and approval by the Lead Agency. Conceptually, the Site Investigation Plan will include, but is not limited to, the following:**

- Performance of a ground penetrating radar (GPR) survey to investigate topographic features that suggest potential soil or groundwater contamination;**
- Collection of surface soil samples using a broad grid system southwest of the tributary of Millbrig Creek that transects the northeast portion of the property and outside of the drainage way;**
- Collection of soil samples using a tighter grid system within the former lead storage pad area and the drainage way;**
- Collection of samples of the sediment in the stream bed and of the surface water on the Property;**
- Collection of samples from previously identified drum areas, including the remnant basement foundation located on the southeastern portion of the property described in the May 15, 2006 ENVIRON International Corporation Declaration;**
- Installation of temporary shallow monitoring wells to sample the shallow groundwater, if present, in the vicinity of the drainage way;**
- Soil probes to further investigate the results of the GPR survey, as necessary;**

- Field analysis of all soil, sediment and surface water samples for total lead and total zinc (i.e. XRF);
- Laboratory analysis of a subset of all the soil, sediment and surface water samples for total RCRA metals and zinc;
- Laboratory analysis of a subset of the soil samples from the previously identified drum areas, including the remnant basement foundation located on the southeastern portion of the Property, for a full-scan of constituents of concern (i.e. total RCRA metals and zinc, total volatile organic compounds (VOCs), total semi-volatile organic compounds (SVOCs), total pesticides, total herbicides, cyanide and PCBs);
- Collection and analysis of groundwater samples collected from the temporary monitoring wells for total VOCs and total RCRA metals and zinc, if ground water is present; and
- Preparation of a risk assessment, as appropriate, to determine risk based cleanup objectives for the Site.

Upon approval of the Site Investigation Plan by the Lead Agency, the Site Investigation Plan will be implemented by the Custodial Trustee. Following implementation of the Site Investigation Plan, the Custodial Trustee will prepare a Site Investigation Report (which shall include the risk assessment, if performed). The Site Investigation Report will be submitted by the Custodial Trustee to the Governmental Parties for review, and approval by the Lead Agency.

#### ***Site Remediation***

Appropriate site remediation will be initially determined by the Custodial Trustee after reviewing the site investigation, risk assessment and cleanup objectives for the site. A Remedial Action Work Plan--designed to achieve the site remediation objectives-- will be prepared by the Custodial Trustee and submitted to the Governmental Parties for review, and approval by the Lead Agency. Anticipated site remediation activities may include but are not limited to the following:

- Removal of contaminated soil at the former lead storage pad area and in the drainage way and at other areas exhibiting constituent concentrations in soil above cleanup objectives;
- Removal of contaminated sediment above cleanup objectives from the stream bed on the Property and repair as needed;
- Confirmation sampling and analysis to determine attainment of cleanup objectives;
- Proper disposal of contaminated soil and sediment;

- Re-grading, contouring and backfilling, as necessary, of the drainage way;
- Installation of silt fencing;
- Vegetation of areas in the drainage way;
- Removal of drums, including those in the remnant basement foundation in the southeast portion of the property described in the May 15, 2006 ENVIRON International Corporation Declaration;
- Closure of mine ventilation shafts;
- Operation and maintenance including, as necessary, fertilizing and re-seeding of the revegetated portions of the remediated property during the three years following completion of that portion of the remedial activities
- Performance of NPDES permit annual inspections for three years; and
- Establish, maintain and enforce institutional controls (including a restrictive covenant to restrict land use), as appropriate.

Upon approval of the Remedial Action Work Plan, the Plan will be implemented by the Custodial Trustee. Upon completion of the remediation activities, the Custodial Trustee will submit a Remediation Report to the Governmental Parties for review, and approval by the Lead Agency.

**EXHIBIT C**

**FORM CUSTODIAL TRUST AGREEMENT**

**EP CUSTODIAL TRUST AGREEMENT**

**DATED JUNE \_\_ 2006**

## TABLE OF CONTENTS

<b>RECITALS .....</b>	<b>1</b>
<b>ARTICLE I DEFINITIONS .....</b>	<b>4</b>
1.1 Definitions .....	4
<b>ARTICLE II THE TRUST .....</b>	<b>8</b>
2.1 Creation and Funding of Custodial Trust Accounts .....	8
2.2 Objective and Purpose .....	12
2.3 Determination and Implementation of Environmental Actions.....	14
2.4 Distributions to the Beneficiaries During the Custodial Trust Term.....	16
2.5 Assignment of Interests in Custodial Trust.....	18
2.6 Future Disposition of the Property.....	19
2.7 Termination of Custodial Trust and Release and Discharge of Custodial Trustee.....	20
<b>ARTICLE III ADMINISTRATION .....</b>	<b>22</b>
3.1 Investment of Custodial Trust Assets .....	22
3.2 Environmental Information, Budgets and Reports .....	23
3.3 Custodial Trust Accounts.....	25
3.4 Manner of Payment.....	25
3.5 Tax Matters .....	25
3.6 Other .....	26
<b>ARTICLE IV CUSTODIAL TRUSTEE .....</b>	<b>26</b>
4.1 Appointment .....	26
4.2 Resignation .....	26
4.3 Removal and Turnover of Funding.....	27



4.4	Acceptance of Appointment by Successor Trustees .....	27
4.5	Administrative Powers .....	28
4.6	Third Party Service Providers .....	29
4.7	Other Activities .....	30
4.8	Limitation of Custodial Trustee's Authority .....	30
4.9	Reliance by Custodial Trustee .....	30
4.10	Compensation and Administrative Costs of the Custodial Trustee .....	31
4.11	Bond .....	31
	<b>ARTICLE V RIGHTS AND LIABILITY OF PARTIES .....</b>	<b>32</b>
5.1	Liability of Custodial Trustee .....	32
5.2	Release; Exculpation .....	34
5.3	Dispute Resolution .....	35
	<b>ARTICLE VI MISCELLANEOUS PROVISIONS .....</b>	<b>37</b>
6.1	Intention of Parties to Establish a Disputed Ownership Fund .....	37
6.2	Preservation of Privilege .....	37
6.3	Cooperation .....	37
6.4	Prevailing Party .....	38
6.5	Laws as to Construction .....	38
6.6	Severability .....	38
6.7	Sufficient Notice .....	39
6.8	Headings .....	44
6.9	Actions Taken on Other Than Business Day .....	44
6.10	Consistency of Agreements; Construction .....	44

6.11	Amendment of Trust.....	44
6.12	Jurisdiction.....	45

#### **EXHIBITS**

Exhibit A	Properties .....	A-1 to A-13
Exhibit B	Custodial Trust Accounts.....	B